

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 5201 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

HERMAN JONES
(Claimant)
S.S.A. No.

MATSON NAVIGATION COMPANY
(Appellant-Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-276

FORMERLY BENEFIT DECISION No. 5201
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The above-named employer on July 9, 1948, appealed from the decision of a Referee (SF-8734) which held that the claimant left his most recent work voluntarily but with good cause within the meaning of Section 58(a)(1) of the Unemployment Insurance Act [now section 1256 of the Unemployment Insurance Code].

Based on the record before us, our statement of fact, reason for decision, and decision are as follows:

STATEMENT OF FACT

The claimant, a member of the National Union of Marine Cooks and Stewards, was last employed by the appellant-employer as a second cook and baker aboard the Steamship HAWAIIAN FISHERMAN on four continuous voyages. On the last trip the vessel left San Francisco on April 28, 1948, and sailed to San Pedro, the first port of call on the voyage, where the claimant left the ship on May 4, 1948, for reasons herein-after set forth.

On May 11, 1948, the claimant reopened a previously filed claim for benefits in a San Francisco office of

the Department of Employment. Thereupon the employer protested and on May 19, 1948, the Department issued a determination which disqualified the claimant for five weeks on the ground that he had left his last employment voluntarily without good cause within the meaning of Section 58(a)(1) of the Unemployment Insurance Act [now section 1256 of the code]. The claimant appealed and the Referee reversed the determination.

On the voyage from San Francisco to San Pedro the claimant contracted a severe cold in addition to "pleurisy pains", and informed the ship's purser that he was sick. However, the purser "didn't give me any medicine or do anything about it". The ship arrived in San Pedro on April 30, 1948, and was scheduled to sail for Hawaii on May 4, 1948. During this period there was no improvement in the claimant's condition and he advised the purser on May 4, 1948, that he was leaving the vessel and to obtain a replacement for him. He subsequently purchased certain medicines and returned to his home in San Francisco on May 5, 1948, where he was confined to bed for six days before recovering sufficiently to contact his union hiring hall for work. In connection with his illness the claimant testified that he did not seek medical attention from a physician or hospitalization because "I knew what was the matter with me. It had happened to me before at one time."

In appealing the employer contends that the claimant's reason for terminating does not constitute good cause for leaving since he did not consider it necessary to secure medical attention and in support of this contention the employer cites Benefit Decision No. 4882-9262 (Appeal letter).

REASONS FOR DECISION

In the instant case the sole issue before us is whether the claimant has established that he had good cause for voluntarily leaving his last employment and in our opinion he has.

It is clear that the claimant was sick and the employer does not contend otherwise. In addition he had attempted to obtain medicine for the relief of his condition while aboard the vessel but without success.

While the claimant's failure to seek the care of a physician may have been a lack of good judgement on his part, his subsequent actions are sufficient to establish that his physical condition was a compelling reason for his termination. In addition the nature of his ailment and his testimony in this connection explain his failure to do so. Furthermore, in view of the fact that he had remained in continuous employment on numerous voyages it would appear that he was sincerely interested in staying in employment so long as he was able to do so and that his decision to leave was not based on any personal whim or inconsequential reason.

In considering Benefit Decision No. 4882-9262, we do not agree with the employer that the conclusion in that case is controlling in the instant appeal. In the aforesaid matter we were concerned with a claimant who contended that certain conditions aboard his vessel were detrimental to his health and who quit for such reason without consulting a physician although the evidence showed that action had been taken to remedy the objectionable condition. Since the testimony in Benefit Decision No. 4882-9262, showed that the claimant therein made no reasonable effort to continue in employment under conditions which would have tended to alleviate his complaint benefits were denied but that decision is certainly distinguishable from the instant appeal in which the claimant could not anticipate any improvement in his condition had he remained in employment.

Accordingly, under the facts herein we conclude that the claimant left his last employment with good cause within the meaning of Section 58(a)(1) of the Act [now section 1256 of the code].

DECISION

The decision of the Referee is affirmed. Benefits are allowed provided that the claimant is otherwise eligible.

Sacramento, California, November 19, 1948.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

PETER E. MITCHELL (Not voting)

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 5201 is hereby designated as Precedent Decision No. P-B-276.

Sacramento, California, March 23, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

RICHARD H. MARRIOTT

DISSENTING - Written Opinion Attached

CARL A. BRITSCHGI

DISSENTING - Written Opinion Attached

HARRY K. GRAFE

DISSENTING OPINION

I cannot agree with the majority that the claimant in this case left his most recent work with good cause within the meaning of section 1256 of the code. My colleagues have apparently predicated their approval of this decision on the basis that the evidence submitted established a necessity on the part of the claimant to leave work for reasons of health. I take exception to this conclusion because it is supported by nothing more than conjecture, speculation and a theoretical inference.

We have repeatedly held that the findings, orders and decisions of an administrative agency must be supported by evidence of sufficient probative force to establish the fairness of its action. To accept the claimant's own diagnosis of his medical condition as establishing a compelling reason for the termination of the employment relationship is completely contrary to the rationale enunciated in Appeals Board Decision No. P-B-117 and numerous other cases issued by this Board.

We have previously found good cause for leaving work where the evidence clearly establishes a necessity for such leaving. In the above cited decision, the claimant suffered from respiratory problems which he attributed to the smog in the Los Angeles area. He had not been under the care of a doctor. We pointed out that unless a claimant seeks out medical treatment and is specifically advised by his doctor to leave work, good cause may not be established. The facts in the case now under consideration are certainly similar to those found in Appeals Board Decision No. P-B-117 and, under the doctrine of "stare decisis" we are bound by that decision. If we are to have any consistency in our decisions, we cannot ignore or merely give lip-service to the principles enunciated in our previously issued precedents. If the quantum of proof produced in this case is sufficient to clearly establish a necessity for the claimant's leaving, I would suggest that our conclusion in Appeals Board Decision No. P-B-117 is erroneous and should be overruled. If we were correct

in Appeals Board Decision No. P-B-117, then this case should not be adopted as a precedent.

CARL A. BRITSCHGI

DISSENTING OPINION

I dissent.

In the instant case the claimant was suffering from a cold and "pleurisy pains" and therefore left his job as a cook and baker aboard ship before it sailed for Hawaii. Although there is no "record before us" (the records of all benefit decision cases having been destroyed long ago), the brief recital of facts indicates the claimant became ill after the ship sailed from San Francisco on April 28, 1948 and before it arrived in San Pedro on April 30. The ship was scheduled to sail for Hawaii on May 4.

Between the date the ship arrived in San Pedro (April 30) and the date it sailed (May 4) the claimant made no effort to obtain medical treatment or assistance. Even after the claimant left the ship he did not seek medical assistance, but purchased some unidentified over-the-counter medication and went to bed for six days.

The Legislature, in section 100 of the Unemployment Insurance Code, announced its purpose for creating a system of unemployment insurance as one of "providing benefits for persons unemployed through no fault of their own, and to reduce involuntary unemployment and the suffering caused thereby to a minimum." Although the emphasis is on involuntary unemployment, the Legislature also provided in section 1256 of the code for payment of benefits if - and only if - voluntary leaving of work is for good cause. In Appeals Board Decision No. P-B-27 we defined such good cause as existing "when the facts disclose a real, substantial and compelling reason of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action."

I submit that the reasonable man genuinely desirous of retaining employment standing in the shoes of the claimant in the present case would have sought medical treatment and assistance to try to keep his job. Such has been the holding of this Board in a substantial number of well-reasoned decisions.

This Board has previously held that an employee has good cause for leaving of work where the evidence clearly points up the question of ill health (Appeals Board Decision No. P-B-112) or where the work itself is detrimental to a claimant's well-being (Benefit Decisions Nos. 4935, 5086 and 5280), provided, of course, that the claimant clearly establishes medical reasons for leaving (Appeals Board Decision No. P-B-117).

In Benefit Decision No. 4968, the claimant, a second cook, left his ship upon return from a voyage to Japan because he was not feeling well, was suffering from rheumatism and did not want to return to the inclement weather prevailing in Japanese ports. He did not seek medical advice. Therefore, it was held that the claimant failed to show good cause for leaving work. The same result prevailed in Benefit Decisions Nos. 5357, 5811, 5846 and 6272 where the claimants did not seek medical treatment before leaving work.

A review of the cases discloses that the instant matter is more reflective of an exception, rather than of the general rule. Consequently, I would hold that the claimant's leaving of work here was without good cause.

HARRY K. GRAFE